

[Federal Register: November 12, 2004 (Volume 69, Number 218)]  
[Proposed Rules]  
[Page 65395-65401]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr12no04-21]

-----  
COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51-2, 51-3, and 51-4

[Docket No. 2004-01-01]  
RIN 3037-AA00

Governance Standards for Central Nonprofit Agencies and Nonprofit Agencies  
Participating in the Javits-Wagner-O'Day Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely  
Disabled.

ACTION: Notice of proposed rulemaking; request for comments.

-----  
SUMMARY: The Committee for Purchase From People Who Are Blind or Severely  
Disabled (The Committee), which is responsible for administering and  
overseeing the implementation of the Javits-Wagner-O'Day (JWOD) Act, proposes  
to amend its regulations by requiring nonprofit agencies awarded Government  
contracts under the authority of the JWOD Act, as well as central nonprofit  
agencies designated by the Committee and nonprofit agencies that would like  
to qualify for participation in the JWOD Program, to comply with new  
governance standards. The proposed governance standards are primarily based  
on standards that are common practice in nonprofit and business communities.  
These new standards would include, among other things, standards concerning  
the practices of boards of directors and the reasonableness of executive and  
other employee compensation. Recent accounts alleging, and public concern  
regarding, isolated instances of excessive compensation packages for  
nonprofit agency executives; a perceived lack of full disclosure in the  
financial reporting of nonprofit agencies; and the absence of formal  
guidelines to establish independent boards of directors for JWOD-affiliated  
central nonprofit agencies and nonprofit agencies prompted this proposed  
change. If fully implemented, this change would help promote sound governance  
procedures for central nonprofit agencies and nonprofit agencies  
participating in the JWOD Program, help ensure the effective and transparent  
administration of Government contract funds, and continue to maintain a high  
level of public support for the JWOD Program's employment mission.

DATES: Submit your written comments on this proposed rule on or before  
January 11, 2005. No public meeting will be held.

Comments on the information collection aspects of this proposed rule will  
be considered if received by January 11, 2005. The Office of Management and  
Budget (OMB) has up to 60 days to approve or disapprove information  
collection but may respond after 30 days. Therefore, to ensure maximum  
consideration, your comments should be received by OMB by December 13, 2004.

ADDRESSES: Send your comments on the proposed rule in one of the following  
ways:

By electronic mail (preferred method) to [rulecomments@jwod.gov](mailto:rulecomments@jwod.gov);

By fax, to the attention of G. John Heyer, to (703) 603-0655;

By postal mail to Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202-3259; or

Through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions on the site for submitting comments.

For more information on how to submit your comments, please refer to the ``Public Comments Solicited'' section below.

You may submit comments on the information collection aspects of the

[[Page 65396]]

proposed rule to the Desk Officer for the Committee for Purchase From People Who Are Blind or Severely Disabled, OMB, Office of Information and Regulatory Affairs, via facsimile or e-mail using the following fax number and e-mail address: 202/395-6566 (fax); [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov) (e-mail). Please provide a copy of your comments to Janet Yandik, Information Management Specialist, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202-3259; (703) 603-0655 (fax); or [rulecomments@jwod.gov](mailto:rulecomments@jwod.gov) (e-mail).

Comments will be made available for public inspection, from 9 a.m. to 4 p.m. on weekdays, at the Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202-3259.

FOR FURTHER INFORMATION CONTACT: G. John Heyer, by telephone at (703) 603-0665, by fax at (703) 603-0655, by e-mail at [jheyer@jwod.gov](mailto:jheyer@jwod.gov), or by postal mail at Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202-3259.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations at 41 CFR Chapter 51, titled ``Committee for Purchase From People Who Are Blind or Severely Disabled,'' provide the requirements, standards, and procedures for the JWOD Program. The JWOD Program creates jobs and training opportunities for people who are blind or who have other severe disabilities. Its primary means of doing so is by requiring Government agencies to purchase selected products and services from nonprofit agencies employing such individuals. As a result, JWOD employees are able to lead more productive, independent lives.

Named for its enabling legislation, the Javits-Wagner-O'Day Act of 1971 (41 U.S.C. 46-48c), the JWOD Program is a mandatory source of supply for Federal employees. The JWOD Program is administered by the Committee for Purchase From People Who Are Blind or Severely Disabled. Two national, independent organizations, National Industries for the Blind (NIB) and NISH, have been designated by the Committee as central nonprofit agencies, and these organizations help State and private nonprofit agencies participate in the JWOD Program.

##### Governance Standards

The Committee proposes to require nonprofit agencies awarded Government contracts under the authority of the JWOD Act, as well as central nonprofit

agencies designated by the Committee and nonprofit agencies that would like to qualify for participation in the JWOD Program, to comply with new governance standards. For the purposes of this proposal, the term governance includes, but is not limited to, the structure of the central nonprofit agency's or nonprofit agency's governing authority, such as its Board of Directors; auditing and reporting of the central nonprofit agency's or nonprofit agency's finances; executive compensation packages provided by the central nonprofit agency or nonprofit agency; and the central nonprofit agency's or nonprofit agency's conflict of interest policy. Adopting the proposed governance standards would mean adding a new Sec. 51-2.10 to the regulations to provide the standards for central nonprofit agencies, qualified nonprofit agencies participating in the JWOD Program, and nonprofit agencies that would like to qualify for participation in the JWOD Program; adding two new paragraphs to the regulations at Sec. 51-3.2 to provide a reference to the standards and reporting requirements for central nonprofit agencies; and adding a new paragraph to the regulations at Sec. 51-4.3 to provide a reference to the standards for nonprofit agencies.

To date, the Committee's regulations have not included governance standards. While the Committee believes, based on its experience managing the JWOD Program, that the overwhelming majority of JWOD-affiliated central nonprofit agencies and nonprofit agencies operate in an ethical and accountable manner, recent accounts alleging (and public concern regarding) isolated instances of excessive compensation packages for nonprofit agency executives, a perceived lack of full disclosure in the financial reporting of nonprofit agencies, and the absence of formal guidelines to establish independent boards of directors for JWOD-affiliated central nonprofit agencies and nonprofit agencies have prompted the need for explicitly stated standards. Therefore, in order to help maintain the integrity of the JWOD Program, the Committee is proposing to add the governance standards listed below to the regulations at 41 CFR 51-2.10.

Each central nonprofit agency, qualified nonprofit agency participating in the JWOD Program, and nonprofit agency that would like to qualify for participation in the JWOD Program would have to comply with Committee-approved governance standards. In evaluating the governance of designated central nonprofit agencies and nonprofit agencies, the Committee would consider compliance to be certification, as described under the heading ``Certification'' below, by the agency that the Board of Directors (or, in the case of noncorporate entities such as State and local governments, an equivalent governing authority):

Does not include family members of the central nonprofit agency's or nonprofit agency's management team;

Does not have the Chairperson also serving as the central nonprofit agency's or nonprofit agency's Chief Executive Officer (CEO), President, Executive Director, or equivalent;

Has an audit committee to oversee the central nonprofit agency's or nonprofit agency's financial affairs, and audits are conducted by an independent auditing firm that is overseen by the audit committee;

Reviews and certifies executive compensation packages, and develops and implements an annual evaluation process for the Board or other governing authority, as well as for the central nonprofit agency's or nonprofit agency's CEO, President, Executive Director, or equivalent;

Has adopted a conflict of interest policy, and discloses all members' business relationships with the central nonprofit agency or nonprofit agency as a part of that policy;

Turns over Board, or other governing authority, membership on a recurring schedule;

Reviews and validates all Internal Revenue Service (IRS) Form 990s and all attachments, and certifies that such filings identify all sources of compensation income from the central nonprofit agency or nonprofit agency and related entities;

Has at least one financial expert serving; and

Publishes and makes public the minutes of Board, or other governing authority, meetings.

Further, in assessing the reasonableness of executive and other employee compensation, the Committee would consider:

The size and complexity of the central nonprofit agency's or nonprofit agency's charter or mission;

The mission area, geographic size, and financial condition of the central nonprofit agency or nonprofit agency;

The technical and professional qualifications required for positions in

[[Page 65397]]

the central nonprofit agency or nonprofit agency;

Compensation packages paid at comparable central nonprofit agencies or nonprofit agencies;

The percentage of the net revenues to the central nonprofit agency or nonprofit agency realized from the JWOD Program paid to employees and to senior management;

The extent to which the central nonprofit agency's or nonprofit agency's executive compensation packages exceed the total compensation offered to the typical, highest paid (excluding any retention allowances and Presidential rank awards), senior executive service (SES), career Federal government employee, as explained below; and

For only nonprofit agencies (not central nonprofit agencies), the median compensation package for the nonprofit agency's direct labor hour workers and how that median compares to the compensation packages offered to executives.

Currently, the total compensation package offered to the typical, highest paid (excluding any retention allowances and Presidential rank awards), SES, career Federal government employee amounts to approximately \$207,000 per year. This amount changes annually, according to adjustments in the salary and benefits for Federal government employees. The Committee would generally consider a central nonprofit agency's or nonprofit agency's executive compensation package unreasonable if it exceeds the total compensation offered to the typical, highest paid (excluding any retention allowances and Presidential rank awards), SES, career Federal government employee, unless the central nonprofit agency or nonprofit agency can provide adequate justification for the level of executive compensation to the Committee. The basis for comparing a central nonprofit agency's or nonprofit agency's executive compensation to a Federal employee's compensation lies in the fact that the JWOD Program is a Federal program and the funds obtained through the JWOD Program are Federal contract funds.

The proposed standards also include procedures that the Committee would follow if a central nonprofit agency or qualified nonprofit agency participating in the JWOD Program violates the governance standards set forth at 41 CFR 51-2.10. Violation by a qualified nonprofit agency participating in the JWOD Program would be handled in accordance with established procedures at 41 CFR 51-4.5, ``Violations by nonprofit agencies.'' Violation by a central nonprofit agency would be investigated by the Committee's staff. The central nonprofit agency concerned would be afforded an opportunity to submit a statement of facts and evidence. The Committee staff would report its findings to the Committee, together with its recommendation. In reviewing the case, the Committee may request the submission of additional evidence or may

conduct its own investigation. If a central nonprofit agency failed to correct its violations of the governance standards, the Committee, after affording the central nonprofit agency an opportunity to address the Committee on the matter, may terminate the central nonprofit agency's designation as a central nonprofit agency and its eligibility to participate in the JWOD Program.

Further, if a nonprofit agency that would like to qualify for participation in the JWOD Program was in violation of the proposed governance standards set forth at 41 CFR 51-2.10, that agency could fail to qualify for participation in the JWOD Program.

These new standards should help promote an environment of sound governance and adequate internal controls for JWOD-affiliated central nonprofit agencies and nonprofit agencies, as well as help ensure the effective and transparent administration of Government contract funds obtained through the JWOD Program. Further, these proposed standards should not impose an undue burden on central nonprofit agencies, nor on nonprofit agencies, because such standards are common practice in nonprofit and business communities.

#### Certification

Certification by a central nonprofit agency that the governance standards set forth in the proposed Sec. 51-2.10 have or have not yet been met would occur on a new annual certification form, due to the Committee by November 1 of each year. Certification by a qualified nonprofit agency participating in the JWOD Program that the governance standards set forth in the proposed Sec. 51-2.10 have or have not yet been met would occur on the existing annual certification forms (Committee Form 403, Annual Certification--Qualified Nonprofit Agencies Serving People Who Are Blind, or Committee Form 404, Annual Certification--Qualified Nonprofit Agencies Serving People Who Are Severely Disabled), due to the Committee by December 1 of each year. Certification by a nonprofit agency that would like to qualify for participation in the JWOD Program that the governance standards set forth in the proposed Sec. 51-2.10 have or have not yet been met would occur on the existing initial certification forms (Committee Form 401, Initial Certification--Qualified Nonprofit Agency Serving People Who Are Blind, or Committee Form 402, Initial Certification--Qualified Nonprofit Agency Serving People Who Are Severely Disabled). These certifications are explained in more detail below, under the heading ``Paperwork Reduction Act.''

As a part of the certification, central nonprofit agencies and nonprofit agencies would have to supply information on the total (cash and noncash) compensation paid to their key employees during either the fiscal year for which they are submitting an annual certification (for central nonprofit agencies and qualified nonprofit agencies participating in the JWOD Program) or the dates covered by the report (for initial certification of nonprofit agencies that would like to participate in the JWOD Program). We base our definition of a ``key employee'' on the definition provided by the IRS in the instructions to the IRS Form 990; a ``key employee'' is any person having responsibilities or powers similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization (such as a CEO, President, Executive Director, or equivalent) but does not include the heads of separate departments or smaller units within an organization. A chief financial officer and the officer in charge of administration or program operations are both key employees if they have the authority to control the organization's activities, its finances, or both. The ``heads of separate departments'' are managers within their

specific areas but not for the organization as a whole and, therefore, are not key employees.

The information we would require would consist of:

The name, address, and title of each key employee;

A numerical estimate of the average hours per week each key employee worked in his or her position;

The salary, fees, bonuses, and severance payments paid to each key employee;

All forms of deferred compensation and future severance payments and all payments to welfare benefit plans (including, but not limited to, medical, dental, life insurance, severance pay, and disability plans) paid on behalf of each key employee; and

All taxable and nontaxable fringe benefits (including, but not limited to, payments made under indemnification arrangements, the value of personal use

[[Page 65398]]

of housing, automobiles, or other assets owned or leased by the agency or provided for the agency's use without charge) provided to each key employee. In summary, the information that central nonprofit agencies and nonprofit agencies would provide to us would be the same as what is required under Part IV of the IRS Form 990.

We are proposing to require this information instead of a photocopy of an agency's most recently compiled IRS Form 990s because, due to differing cycles of fiscal years and filing for extensions of the deadline to submit IRS Form 990s, central nonprofit agencies and nonprofit agencies may be two or three years behind the current fiscal year in filing their IRS Form 990s. Out-of-date information would do little to help the Committee determine whether a central nonprofit agency or nonprofit agency is currently meeting the requirements of the Committee's regulations. Therefore, we would require central nonprofit agencies and nonprofit agencies to submit current information on the total compensation packages offered to key employees.

#### Public Comments Solicited

We invite public comments on this proposed rule. Please submit your comments by the date given in the DATES section using one of the options offered in the ADDRESSES section. Please mention the docket number (2004-01-01) at the top of your comments. As all comments received will be made available for public inspection, please do not include any information, such as your street address or telephone number, that you would prefer to remain private. If you choose to send your comments by postal mail, please include a DOS-formatted 3 1/2-inch disk with your written comments. If you have any questions about how to comment on this proposed rule, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

All comments we receive will be made available for public inspection, from 9 a.m. to 4 p.m. on weekdays, at the address listed in the ADDRESSES section. To facilitate public inspection of comments, please call (703) 603-7740 to notify us of your intention to inspect comments before coming to the Committee office.

#### Certifications and Required Determinations

#### Regulatory Flexibility Act

I certify that the changes proposed in this rule would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping, or compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c).

We invite comments on this certification. Please submit your comments by the date given in the DATES section using one of the options offered in the ADDRESSES section. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

#### Executive Order 12866

The Office of Management and Budget has determined that this proposal is ``not significant'' for purposes of Executive Order 12866.

a. If adopted, this proposal would not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This proposal would have minimal effects on regulated entities.

b. If adopted, this proposal would not create inconsistencies with other agencies' actions. No other Federal agency has any role in managing the JWOD Program.

c. If adopted, this proposal would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. If adopted, this proposal would not raise novel legal or policy issues. This proposal is designed to incorporate standard, high-quality business practices into the requirements for central nonprofit agencies and nonprofit agencies participating in the JWOD Program.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) It will have no preemptive effect on State and local laws and regulations; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Executive Order 13132

This proposal does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

#### Unfunded Mandates Reform Act

This proposed rule has been reviewed under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.). If adopted, this proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year, nor would it have a significant or unique effect on State, Tribal, or local governments or the private sector.

#### Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB regulations at 5 CFR 1320.3(c) define a ``collection of information'' as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. In addition, the OMB regulations at 5 CFR 1320.3(c)(4)(i) state that any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability (such as this proposed rule) is deemed to involve 10 or more persons. This proposal would require a new certification from central nonprofit agencies, qualified nonprofit agencies participating in the JWOD Program, and nonprofit agencies that would like to qualify for participation in the JWOD Program and would require these agencies to supply information on the total (cash and noncash) compensation paid to their key employees (as explained above under the heading ``Certification''). These new information collections would require OMB approval under the Paperwork Reduction Act.

Simultaneous with the publication of this proposed rule, we have submitted an application for information collection approval from OMB to require a new annual certification from central nonprofit agencies that the governance standards in proposed 41 CFR 51-2.10 have or have not yet been met. This certification would include a requirement that central nonprofit agencies supply information on the total (cash and noncash) compensation paid to their key employees during the fiscal year for which they are submitting an annual certification. The application for

[[Page 65399]]

information collection approval from OMB also requests a revision to our existing annual certification forms, which are due to us from qualified nonprofit agencies participating in the JWOD Program by December 1 of each year. The revised forms would include the new certification proposed in this document and a requirement that nonprofit agencies supply information on the total (cash and noncash) compensation paid to their key employees during the fiscal year for which they are submitting an annual certification. In addition, the application for information collection approval from OMB requests a revision to our existing initial certification forms, which are required for nonprofit agencies that would like to participate in the JWOD Program. The revised forms would include the new certification proposed in this document and a requirement that nonprofit agencies supply information on the total (cash and noncash) compensation paid to their key employees during the dates covered by the report. We will notify the public of OMB's response to our application in the final rule for this regulation.

We are asking OMB to approve, for the first time, a new Committee Form 405, which would be the Annual Certification-Central Nonprofit Agencies. The new form would be due to the Committee by November 1 of each year from the two designated central nonprofit agencies (currently NIB and NISH). The new form would require each central nonprofit agency's Officer of the Board and Agency Executive to certify, via signature, that the governance standards in Sec. 51-2.10 have or have not yet been met. If the governance standards have not yet been met, an explanation (with relevant documentation attached) would be required. The new form would also require central nonprofit agencies to supply, and certify the accuracy and completeness of, information on the total (cash and noncash) compensation paid to their key employees during the

fiscal year for which they are submitting an annual certification. Lastly, the new form would ask if any changes have been made during the past year to the central nonprofit agency's articles of incorporation or bylaws. This last piece of information has been offered sporadically over the years by central nonprofit agencies; including it on the new form would standardize the collection of this information.

We expect that completing this new certification form would require a moderate amount of time for central nonprofit agencies even though the certification and any documents to support the certification do not exceed the knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. We estimate that it would take an average of 20 hours for a respondent to complete the form, including reading the appropriate instructions; referring to and reading the new governance standards (as provided in Sec. 51-2.10, below); certifying that the new standards have or have not been met; if necessary, providing a brief explanation concerning why the governance standards have not yet been met and attaching appropriate documentation; gathering and recording information on the total (cash and noncash) compensation paid to the agency's key employees during the fiscal year for which the agency is submitting an annual certification; certifying that the central nonprofit agency's articles of incorporation or bylaws have or have not changed during the most recent fiscal year; and, if necessary, attaching any changes to the articles of incorporation or bylaws. Therefore, for the total number of respondents completing this form (2), the new information collection requirements would result in a total annual burden of 40 hours.

Committee Form 403 (Annual Certification--Qualified Nonprofit Agencies Serving People Who Are Blind) and Committee Form 404 (Annual Certification--Qualified Nonprofit Agencies Serving People Who Are Severely Disabled) are already approved by OMB and assigned OMB control numbers 3037-0001 and 3037-0002, respectively. Both of these control numbers expire on March 31, 2006. We have submitted a revision request to OMB to update these two forms to include a new certification statement that would require each nonprofit agency's Officer of the Board and Agency Executive to certify, via signature, that the governance standards in Sec. 51-2.10 have or have not yet been met. If the governance standards have not yet been met, an explanation (with relevant documentation attached) would be required. In addition, each nonprofit agency would have to supply, and certify the accuracy and completeness of, information on the total (cash and noncash) compensation paid to their key employees during the fiscal year for which they are submitting an annual certification.

We expect the additional certification on Committee Form 403 or 404 would require a moderate time for respondents even though the certification and any documents to support the certification do not exceed the knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. We estimate that it would take an average of 19 hours for a respondent to read the appropriate instructions; refer to and read the new standards (as provided in Sec. 51-2.10, below); certify that the new standards have or have not been met; if necessary, provide a brief explanation concerning why the governance standards have not yet been met and attach appropriate documentation; and gather and record information on the total (cash and noncash) compensation paid to the agency's key employees during the fiscal year for which the agency is submitting an annual certification. Therefore, for the total number of respondents completing both of these forms (642; 77 for Form 403, and 565 for Form 404), the new information collection requirements would result in an additional annual burden of 12,198 hours (1,463 hours for Form 403, and 10,735 hours for Form 404). In addition, in accordance with 41 CFR 51-4.3(b)(4), relevant records

would have to be made available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

In addition, Committee Form 401 (Initial Certification-Qualified Nonprofit Agency Serving People Who Are Blind) and Committee Form 402 (Initial Certification-Qualified Nonprofit Agency Serving People Who Are Severely Disabled) are already approved by OMB and assigned OMB control numbers 3037-0004 and 3037-0003, respectively. Both of these control numbers expire on March 31, 2005. We have submitted a revision request to OMB to update these two forms to include a new certification statement that would require each nonprofit agency's Officer of the Board and Agency Executive to certify, via signature, that the governance standards in Sec. 51-2.10 have or have not yet been met. If the governance standards have not yet been met, an explanation (with relevant documentation attached) would be required. In addition, each nonprofit agency would have to supply, and certify the accuracy and completeness of, information on the total (cash and noncash) compensation paid to their key employees during the dates covered by the report.

We expect the additional certification on Committee Form 401 or 402 would require a moderate time for respondents even though the certification and any documents to support the certification do not exceed the knowledge and

[[Page 65400]]

information normally possessed by a prudent person in the ordinary course of business dealings. We estimate that it would take an average of 19 hours for a respondent to read the appropriate instructions; refer to and read the new standards (as provided in Sec. 51-2.10, below); certify that the new standards have or have not been met; if necessary, provide a brief explanation concerning why the governance standards have not yet been met and attach appropriate documentation; and gather and record information on the total (cash and noncash) compensation paid to the agency's key employees during the dates covered by the report. Therefore, for the total number of respondents completing both of these forms (32; 2 for Form 401, and 30 for Form 402), the new information collection requirements would result in an additional annual burden of 608 hours (38 hours for Form 401, and 570 hours for Form 402).

OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (4) ways to minimize the burden of the collection of information on those who are to respond. See the DATES and ADDRESSES sections of this proposed rule for information on submitting your comments on this information collection.

List of Subjects

41 CFR Part 51-2

Organization and functions (Government agencies).

41 CFR Part 51-3

Government procurement, Handicapped.

41 CFR Part 51-4

Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Committee proposes to amend parts 51-2, 51-3, and 51-4 of title 41, chapter 51 of the Code of Federal Regulations as follows:

1. The authority citation for parts 51-2, 51-3, and 51-4 continues to read as follows:

Authority: 41 U.S.C. 46-48c.

PART 51-2--COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Add a new Sec. 51-2.10 to read as follows:

Sec. 51-2.10 Program participant governance.

Each central nonprofit agency, qualified nonprofit agency participating in the JWOD Program, and nonprofit agency that would like to qualify for participation in the JWOD Program must comply with Committee-approved governance standards.

(a) In evaluating the governance of central nonprofit agencies and nonprofit agencies, the Committee will consider compliance to be certification by the agency, in accordance with paragraph (d) of this section, that the Board of Directors (or, in the case of noncorporate entities such as State and local governments, an equivalent governing authority):

(1) Does not include family members of the central nonprofit agency's or nonprofit agency's management team;

(2) Does not have the Chairperson also serving as the central nonprofit agency's or nonprofit agency's Chief Executive Officer (CEO), President, Executive Director, or equivalent;

(3) Has an audit committee to oversee the central nonprofit agency's or nonprofit agency's financial affairs, and audits are conducted by an independent auditing firm that is overseen by the audit committee;

(4) Reviews and certifies executive compensation packages, and develops and implements an annual evaluation process for the Board or other governing authority, as well as for the central nonprofit agency's or nonprofit agency's CEO, President, Executive Director, or equivalent;

(5) Has adopted a conflict of interest policy, and discloses all members' business relationships with the central nonprofit agency or nonprofit agency as a part of that policy;

(6) Turns over Board, or other governing authority, membership on a recurring schedule;

(7) Reviews and validates all Internal Revenue Service (IRS) Form 990s and all attachments, and certifies that such filings identify all sources of compensation income from the central nonprofit agency or nonprofit agency and related entities;

(8) Has at least one financial expert serving; and

(9) Publishes and makes public the minutes of Board, or other governing authority, meetings.

(b) In assessing the reasonableness of executive and other employee compensation, the Committee will consider:

(1) The size and complexity of the central nonprofit agency's or nonprofit agency's charter or mission;

(2) The mission area, geographic size, and financial condition of the central nonprofit agency or nonprofit agency;

(3) The technical and professional qualifications required for positions in the central nonprofit agency or nonprofit agency;

(4) Compensation packages paid at comparable central nonprofit agencies or nonprofit agencies;

(5) The percentage of the net revenues to the central nonprofit agency or nonprofit agency realized from the JWOD Program paid to employees and to senior management;

(6) The extent to which the central nonprofit agency's or nonprofit agency's executive compensation packages exceed the total compensation offered to the typical, highest paid (excluding any retention allowances and Presidential rank awards), senior executive service, career Federal government employee; and

(7) For only nonprofit agencies, the median compensation package for the nonprofit agency's direct labor hour workers and how that median compares to the compensation packages offered to executives.

(c) Certification. (1) A central nonprofit agency must certify that the governance standards set forth in paragraphs (a) and (b) of this section have or have not yet been met by completing the annual certification form (Committee Form 405) and providing the completed form to the Committee by November 1 of each year.

(2) Qualified nonprofit agencies participating in the JWOD Program must certify that the governance standards set forth in paragraphs (a) and (b) of this section have or have not yet been met on the annual certification form required by Sec. 51-4.3(a) of this chapter.

(3) Nonprofit agencies that would like to qualify for participation in the JWOD Program must certify that the governance standards set forth in paragraphs (a) and (b) of this section have or have not yet been met on the initial certification form required by Sec. 51-4.2(c) of this chapter.

(d) Violations. (1) Violations of the governance standards set forth in paragraphs (a) and (b) of this section by

[[Page 65401]]

central nonprofit agencies will be investigated by the Committee's staff. The central nonprofit agency concerned will be afforded an opportunity to submit a statement of facts and evidence. The Committee staff will report its findings to the Committee, together with its recommendation. In reviewing the case, the Committee may request the submission of additional evidence or may conduct its own investigation. If a central nonprofit agency fails to correct its violations of the governance standards set forth in paragraphs (a) and (b) of this section, the Committee, after affording the central nonprofit agency an opportunity to address the Committee on the matter, may terminate the central nonprofit agency's designation as a central nonprofit agency and its eligibility to participate in the JWOD Program.

(2) Violations of the governance standards set forth in paragraphs (a) and (b) of this section by qualified nonprofit agencies participating in the JWOD Program will be handled in accordance with 41 CFR 51-4.5, ``Violations by nonprofit agencies,' ' of this chapter.

(e) The information collection requirements set forth in this section for central nonprofit agencies are included on Committee Form 405, which has approved by the Office of Management and Budget (OMB) under OMB control number 3037-xxxx. The information collection requirements set forth in this section for qualified nonprofit agencies participating in the JWOD Program are included on Committee Forms 403 and 404, which have been approved by the Office of Management and Budget (OMB) under OMB control numbers 3037-0001 and 3037-0002, respectively. The information collection requirements set forth in this section for nonprofit agencies that would like to qualify for participation in the JWOD Program are included on Committee Forms 401 and 402, which have been approved by the Office of Management and Budget (OMB) under OMB control numbers 3037-0004 and 3037-0003, respectively. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PART 51-3--CENTRAL NONPROFIT AGENCIES

3. Amend Sec. 51-3.2 by adding new paragraphs (o) and (p) to read as follows:

Sec. 51-3.2 Responsibilities under the JWOD Program.

\* \* \* \* \*

(o) Submit to the Committee, by November 1 of each year, a completed copy of the Annual Certification--Central Nonprofit Agency (Committee Form 405) covering the fiscal year ending the preceding September 30.

(p) Comply with Committee-approved governance standards, as provided in Sec. 51-2.10 of this chapter.

PART 51-4--NONPROFIT AGENCIES

4. Amend Sec. 51-4.3 by adding a new paragraph (b)(10) to read as follows:

Sec. 51-4.3 Maintaining qualification.

\* \* \* \* \*

(b) \* \* \*

(10) Comply with Committee-approved governance standards, as provided in Sec. 51-2.10 of this chapter.

\* \* \* \* \*

Dated: November 5, 2004.

Leon A. Wilson, Jr.,  
Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

[FR Doc. 04-25233 Filed 11-10-04; 8:45 am]

BILLING CODE 6353-01-P